

United States
12
Circuit Court of Appeals
For the Ninth Circuit.

WALTON N. MOORE DRY GOODS CO., IN-
CORPORATED, a Corporation,
Plaintiff in Error,

vs.

COMMERCIAL INDUSTRIAL COMPANY,
LTD., a Corporation, Successors of J. J.
CHOOBIN & CO., A. V. KASSIANOFF
& CO.,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
Second Division.

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Names and Addresses of Attorneys of Record.

Messrs. GREGORY & GOODELL, Balfour Building, San Francisco, California,
Attorneys for Plaintiff.

AMBROSE GHERINI, Esq., 460 Montgomery St., San Francisco, California, and BREWSTER F. AMES, Esq., Chronicle Building, San Francisco, California,
Attorneys for Defendant.

In the Southern Division of the District Court of the United States for the Northern District of California.

No. 16,619.

WALTON N. MOORE DRY GOODS CO., INCORPORATED, a Corporation,
Plaintiff,

vs.

COMMERCIAL INDUSTRIAL COMPANY, LTD., a Corporation, Successors of J. J. CHOORIN & CO., A. V. KASSIANOFF & CO.,
Defendant.

Complaint.

Plaintiff complains of defendant and for cause of action alleges:

I.

That during all the times herein mentioned

plaintiff was and now is a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of New York, doing business as a wholesale dealer in dry goods and other merchandise in the City and County of San Francisco, State of California, and elsewhere in the United States and foreign countries.

II.

That during all the times herein mentioned defendant was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Siberia, Russia, doing a commercial business therein and in the United States of America, and elsewhere in foreign countries.

III.

That within four years last past plaintiff sold to defendant dry goods and other merchandise of the value of One Hundred Thirty-eight [1*] Thousand Three and 05/100 (\$138,003.05) Dollars at its special instance and request. That said goods and other merchandise were shipped to defendant at Vladivostock, Siberia, and drafts with bills of lading attached were drawn upon and presented to said defendant at Vladivostock for the amount of the sales price thereof. That said drafts were not paid nor met by the defendant when presented for payment at said Vladivostock.

IV.

That defendant then and there agreed with plaintiff that plaintiff should retake the said goods and ship the same out of Siberia, and should resell the

*Page-number appearing at foot of page of original certified Transcript of Record.

same and charge the defendant with any loss which might be sustained by plaintiff in said transaction, and which said defendant then and there agreed to pay to plaintiff. That said goods were so transported out of Vladivostock by plaintiff and were sold by it in the City and County of San Francisco, State of California, to the best advantage possible, and that a loss in the amount of Fifty-six Thousand Seven Hundred Fifty-two and 53/100 (56,752.53) Dollars has been thereby sustained and suffered by plaintiff in such transaction by reason of the failure of defendant to take said goods and pay for the same. That due demand has been made by plaintiff upon defendant for the payment of the same but that defendant refused and still refuses to pay the same or any part thereof, and the full amount is now due, owing and unpaid from defendant to plaintiff.

WHEREFORE, plaintiff prays judgment against defendant for the sum of Fifty-six Thousand Seven Hundred Fifty-two and 53/100 (\$56,752.53) Dollars, together with interest and costs of suit.

GREGORY & GOODELL,
Attorneys for Plaintiff. [2]

State of California,
City and County of San Francisco,—ss.

Walton N. Moore, being first duly sworn, deposes and says:

That he is and was at all times herein mentioned the president of Walton N. Moore Dry Goods Co., Incorporated, a corporation, the plaintiff above;

Action brought in said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City and County of San Francisco.

GREGORY & GOODELL,
Plaintiff's Attorneys.

(Summons.)

The President of the United States of America,
GREETING: To COMMERCIAL INDUSTRIAL COMPANY, LTD., a Corporation, Successors of J. J. CHOORIN & CO., A. V. KASIANOFF & CO., Defendants.

YOU ARE HEREBY DIRECTED TO APPEAR and answer the complaint in an action entitled as above, brought against you in the Southern Division of the United States District Court for the Northern District of California, Second Division, within ten days after the service on you of this Summons—if served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any moneys or damages demanded in the complaint, as arising upon contract, or it will apply to the Court for any other relief demanded in the complaint.

WITNESS, the Honorable WILLIAM C. VAN FLEET, Judge of the said District Court, this 4th day of August, in the year of our Lord one thousand nine hundred and twenty-one, and of our in-

dependence the one hundred and forty-sixth.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk. [4]

Return on Service of Writ.

United States Marshal's Office,
Northern District of California.

I HEREBY CERTIFY that I received the within writ on the 4th day of August, 1921, and personally served the same on the 4th day of August, 1921, upon Commercial Industrial Company by delivering to and leaving with Vassil H. Hayeff, Managing Agent of the Commercial Industrial Company, said defendant named therein, personally, at the City and County of San Francisco in said District, a certified copy thereof, together with a copy of the complaint, attached thereto.

J. B. HOLOHAN,

U. S. Marshal.

By Laurence J. Conlon,

Office Deputy.

San Francisco, ———, 19—.

Return on Service of Writ.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Summons on the therein named Commercial Industrial Company, by handing to and leaving a true and correct copy thereof with Nicholas H. Ivanoff, Managing Agent of the Commercial Indus-

trial Company, personally, at San Francisco in said District on the 4th day of August, A. D. 1921.

J. B. HOLOHAN,

U. S. Marshal.

By Laurence J. Conlon,

Deputy.

[Endorsed]: Filed Aug. 16, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[5]

(Title of Court and Cause.)

Order Granting Leave to Defendant to Appear Specially for the Purpose of Moving to Quash the Alleged Service Upon It of the Summons in This Action and to Dismiss Said Action; Also Extending the Time of Defendant to Answer or Plead to the Complaint in This Action in the Event that Said Motion Be Denied, and Fixing Day of Hearing of Said Motion.

The Court having read the affidavits of Vasiliy A. Haieff and Nicholas N. Ivanoff in the above-entitled action this day filed and good cause appearing therefor, it is ordered that;

Defendant be and it is hereby granted leave to appear in said action specially for the purpose of moving the Court for an order quashing, annulling, setting aside and holding for naught the alleged service of summons in said motion attempted to be made upon defendant and dismissing said action.

The time within which defendant may appear

herein generally to answer or otherwise plead to the complaint herein is hereby extended and enlarged to and including the 10th day after the entering herein of an order denying the aforesaid motion of defendant in the event that said motion be denied.

Neither the application for, nor the making of, or filing of this order, nor any reliance thereon by defendant, nor the proceedings to be taken, nor the motion to be made to quash service of summons and to dismiss said action shall be deemed or construed to constitute a general appearance by defendant, or waiver by said defendant of any objection to be urged on said motion to quash service of summons or for a dismissal of this action.

The hearing of said motion of defendant is hereby fixed for Monday the 29th day of August, 1921, at ten o'clock A. M. of said day in the courtroom of this court, in the Postoffice Building, corner of Seventh and Mission Streets, San Francisco, California, [6] and notice of the same shall be served upon the plaintiff in said action not less than 3 days before the date hereby fixed for said hearing.

Dated: San Francisco, California, August 25th, 1921.

WM. C. VAN FLEET,
Judge.

Due service of the within order and receipt of copy is hereby admitted this 25th day of Aug., 1921.

GREGORY & GOODELL,
Attorneys for Plff.

[Endorsed]: Filed Aug. 25, 1921. W. B. Mal-
ing, Clerk. [7]

(Title of Court and Cause.)

**Special Appearance and Motion by Defendant for
an Order Quashing the Alleged Service Upon
It of the Summons in this Action and for a
Further Order Dismissing Said Action.**

Now comes the defendant herein by Ambrose Gherini and Brewster F. Ames, its attorneys, appearing therein specially for the purpose of this motion, and for no other purpose; and without submitting itself to the jurisdiction of this Court, moves said Court for an order quashing the alleged service upon it of the summons in this action and for a further order dismissing said action upon the following grounds:

(1) Said alleged corporation defendant is not, and never was, a corporation organized or existing under or by virtue of the laws of the State of California, and has not now, and never has had, an office or place of business within the Northern District of California nor elsewhere within the State of California, and has never carried on, conducted nor transacted any business therein.

(2) The contracts of sale referred to in the complaint herein was neither entered into, made, nor to be performed, nor was it broken in the Northern District of California, nor elsewhere in the State of California nor in the United States of America.

(3) Defendant does not have or maintain any person within the Southern Division of the Northern District of California upon whom service of summons or other process might be made, and has never designated any person within said Southern Division of the Northern District of California, nor within the State of California upon whom service of summons or other process might be made. [8]

(4) Service of summons in this action was attempted to be made on defendant by serving a copy of the original of said summons together with the copy of complaint in said action on Vasiliy A. Haieff, and another copy of the same upon Nicholas N. Ivanoff in the City and County of San Francisco, State of California, on the 4th day of August, 1921, and the return of service of said summons made by the United States Marshal purports to show that it was served on Vasill A. Hayeff and Nicholas N. Ivanoff, each denominated therein as managing agents of defendant.

(5) At the time of the attempted service of summons upon defendant by service of a copy thereof upon said Vasiliy A. Haieff and Nicholas N. Ivanoff, as aforesaid, Vasiliy A. Haieff and Nicholas N. Ivanoff were not and neither of them was the managing or business agent, cashier or secretary nor an officer nor agent of said defendant nor authorized by it to receive or accept service of summons upon it, nor were they nor was either of them at said time engaged in doing any business for, or on behalf of said defendant in said Southern Division of the

Northern District of California, nor in the State of California, excepting that the said Vasiliy A. Haieff had on the second day of August, 1921, and again on the 4th day of August, 1921, attempted to ascertain from Walton N. Moore, president of plaintiff corporation, upon what terms the controversy existing between plaintiff and defendant could be settled or adjusted.

(6) Said Vasiliy A. Haieff and Nicholas N. Ivanoff at the time of the pretended service of summons in this action were both of them only temporary and casually present in the City and County of San Francisco, State of California.

(7) Defendant has not accepted service herein of said summons attempted to be made upon it as aforesaid, nor has it appeared in said action, nor does it now appear herein except hereby [9] and specially for the purpose of this motion.

Defendant has not waived, nor does it now waive due service of summons upon it.

This motion to quash service of summons as aforesaid and to dismiss the above-entitled action is made upon all of the papers and records now on file and of record in the above-entitled action, and upon such other papers and records in said action as may be on file and of record herein at the time of the hearing of said motion, upon the affidavits of Vasiliy A. Haieff and Nicholas N. Ivanoff served and to be filed herein, which affidavits are hereby referred to and by reference made a part hereof, and upon such other evidence, oral and documentary as may be offered upon the hearing of said motion.

WHEREFORE, defendant prays that the alleged service of summons in this action attempted to be made upon it in the manner hereinbefore stated be quashed, annulled, set aside and held for naught, and that the said action be dismissed.

Dated: San Francisco, Calif., August 25, 1921.

COMMERCIAL INDUSTRIAL COMPANY,
LTD., a Corporation, Successors of J. J.
CHORIN & CO., A. V. KASSIA-
NOFF & CO., Appearing Specially by
BREWSTER F. AMES, AMBROSE
GHERINI.

[Endorsed]: Filed August 25, 1921. Walter B.
Maling, Clerk. [10]

(Title of Court and Cause.)

**Notice of Motion to Quash the Alleged Service of
Summons upon Defendant and to Dismiss Said
Action.**

To Plaintiff and Messrs. Gregory & Goodell, Its
Attorneys:

Each and all of you will please take notice that defendant, specially appearing for that purpose and not otherwise, herewith serves upon you, and will file herewith in said action its motion for an order quashing, annulling, setting aside and holding for naught the alleged service of summons and for an order dismissing said action. Defendant accompanies the said motion by a special appearance for the sole purpose of making such motion.

A copy of said special appearance and written motion is hereto attached, made a part hereof, and served herewith.

You will also take notice that the above-entitled Court has made an order attached thereto fixing the hearing of said motion for Monday, the 29th day of August, 1921, at ten o'clock A. M. of said day.

The defendant will call up its motion for hearing at the time fixed in said order, at the courtroom of the above-named court in the Postoffice Building, corner of Seventh and Mission Streets, San Francisco, California, and will present and make the same upon all of the grounds and upon the papers and evidence mentioned in said motion.

Dated: San Francisco, California, August 25th, 1921.

COMMERCIAL INDUSTRIAL COMPANY,
LTD., a Corporation, Successors of J. J.
CHOORIN & CO., A. V. KASSIA-
NOFF & CO., Appearing Specially by
BREWSTER F. AMES, AMBROSE
GHERINI, Its Attorneys. [11]

Due service of the within notice of motion and receipt of copy is hereby admitted this 25th day of August, 1921.

GREGORY & GOODELL,
Attorney for Plff.

[Endorsed]: Filed Aug. 25, 1921. W. B. Maling,
Clerk. [12]

At a stated term, to wit, the July term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Monday, the 17th day of October, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 16,619.

WALTON N. MOORE DRY GOODS CO., INC.,
vs.

COMMERCIAL INDUSTRIAL CO., LTD.

Minutes of Court—October 17, 1921—Order Granting Defendant's Motion to Quash Service of Summons, etc.

Defendant's motion to quash service of summons and to dismiss this action, heretofore heard and submitted, being now fully considered and the Court having filed its memorandum opinion, it is ordered that said motion be, and the same is hereby, granted and that this action be and is hereby dismissed. [13]

At a stated term, to wit, the November term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Monday, the ninth day of January, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 16,619.

WALTON N. MOORE DRY GOODS CO., INC.,
vs.

COMMERCIAL INDUSTRIAL CO., LTD.

**Minutes of Court—January 9, 1922—Order for
Judgment, etc.**

Upon motion of B. F. Ames, Esq., attorney for defendant, and it appearing that on October 17, 1921, an order was entered granting the defendant's motion to quash service of summons and dismissing this cause, it is ordered that a judgment of dismissal be entered herein. [14]

(Title of Court and Cause.)

Judgment of Dismissal.

In this cause the Court having on October 17, 1921, granted defendant's motion to quash service of summons and ordered that this cause be dismissed:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that plaintiff take nothing by this action and that defendant go hereof without day and that said defendant do have and recover of and from said plaintiff its costs herein expended taxed at \$——.

Judgment entered January 9, 1922.

WALTER B. MALING,
Clerk.

A true copy. Attest:

[Seal] WALTER B. MALING,
Clerk.

[Endorsed]: Filed Jan. 9, 1922. Walter B. Maling, Clerk. [15]

(Title of Court and Cause.)

**Certificate of Clerk U. S. District Court to
Judgment-roll.**

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

ATTEST my hand and the seal of said District Court, this ninth day of January, 1922.

[Seal] WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: Filed January 9, 1922. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[16]

(Title of Court and Cause.)

(Opinion.)

GREGORY & GOODELL, of San Francisco, Calif.,
Attorneys for Plaintiff.

AMBROSE GHERINI, of San Francisco, Calif.,
Attorney for Defendant.

Motion to quash service of summons and dismiss the action for want of competent service upon defendant, a foreign corporation.

The plaintiff is a New York corporation having a place of business in San Francisco, where it carries on a wholesale dry goods business, and the defendant is a foreign corporation organized under the laws of Russia and doing business at Vladivostock and other points in the state or province of Siberia; the matter in suit grows out of the sale and consignment, some time prior to the bringing of the action, of merchandise by plaintiff in San Francisco to defendant in Vladivostock to be there paid for but the drafts for which were not honored on presentation; and it is alleged "that defendant then and there agreed with plaintiff that plaintiff should retake the said goods and ship the same out of Siberia, and should resell the same and charge the defendant with any loss which might be sustained by plaintiff in said transaction and

which said defendant then and there agreed to pay to plaintiff"; that the consignment was thereupon reshipped to San Francisco by plaintiff and there sold resulting in a loss to plaintiff which defendant has not paid and for which breach the action is brought.

The circumstances under which service in the action was had are these: In April, 1921, one Ivanoff called at the place of business of plaintiff in San Francisco bringing a letter of [17] introduction from the defendant wherein it was stated that the bearer "is our representative for the U. S. A. and Canada" and stated that among other things he was directed to "settle the question about the goods which were shipped from Vladivostock"; the interview of plaintiff with Ivanoff resulted in no adjustment of the demand and the latter proceeded to New York where the defendant maintains an office or place of business; thereafter, about the first of August, 1921, Ivanoff came to San Francisco to meet one Haieff, one of the principal owners or stockholders in the defendant corporation who was arriving from Vladivostock, and on the second of August Ivanoff and Haieff called at the place of business of the plaintiff in an endeavor to settle the matter in dispute between them; no adjustment was accomplished at this meeting and a second conference was held on August 4th with no better success. On this latter date the plaintiff, having in the meantime had the action filed, procured the Marshal to make service of summons upon both Ivanoff and Haieff, the return

reciting as to each that he was served as "managing agent of defendant."

Thereupon the present motion was made. The affidavit of Ivanoff states that he was not at the time of service nor "at any time or at all the the managing or business agent, cashier or secretary, or an officer or agent of aforesaid defendant or authorized by it to receive or accept service of summons upon it"; that he was in San Francisco on the occasion of the service merely temporarily and for the purpose of meeting Mr. Haieff and his daughter, who were Russians and could not speak the English language, in order to assist them and act as their interpreter in the matter of placing Mr. Haieff's daughter in a young ladies boarding school in California and to accompany Mr. Haieff to New York City. The affidavit of Haieff states that he was, on the occasion of the service upon him "only temporarily and casually present in the City and County of San Francisco, State of California, and was not, and am not, present therein for the [18] purpose of transacting business on behalf of defendant or of transacting any business except as hereinafter particularly set forth"; and, after referring to the service of summons upon him states: "I am not now, nor was I at the time of the aforesaid pretended service of summons upon me, or at all, on or about the 4th day of August, 1921, or at any time or at all, the managing or business agent, cashier or secretary or an officer or agent of aforesaid defendant or authorized by it to receive or accept service of summons upon it. After my home

in Blagoveschensk, Russia, had been seized by the Bolsheviks, I, with my wife and children, escaped from Blagoveschensk to Harbin, China, and there decided to send my son Valentine, first, and take my daughter Nadezda later, to the United States for the purpose of placing them in American schools for education, my wife and our remaining children to remain in Russia in accordance with said plan and for the further purpose of improving my health which has been seriously impaired by reason of my previous experiences with the Bolsheviks in Russia; and for no other purpose, except as hereinafter mentioned, I have made this present visit to the State of California with my said daughter. I have entered my said son as a student at the University of California, and my said daughter at Castilleja School at Palo Alto, Santa Clara County, State of California. On or about the 2d day of August, 1921, and again on or about the 4th day of August, 1921, subsequent to all the alleged happenings referred to in the complaint on file herein, I called on Walton N. Moore, president of plaintiff corporation herein, at his office in San Francisco, California, with Nicholas N. Ivanoff, who interpreted for me in the conversation which I then and there held with the said Walton N. Moore, since I have no knowledge of the English language, and I endeavored to ascertain from him upon what terms the controversy existing between plaintiff and defendant could be adjusted in order that I might make a report on the matter.” [19]

The affidavit of Walton N. Moore for the plain-

tiff states that Ivanoff and Haieff stated that they were authorized to settle the matter in dispute for the defendant; and there is an affidavit by one Garrissere in behalf of plaintiff to the effect that on August 20, 1921, the defendant purchased of a corporation represented by affiant a consignment of goods to be shipped to the Orient and that in that transaction Ivanoff acted in behalf of and represented himself as the agent of the defendant and that the goods were paid for by him by check drawn on a New York Bank.

It does not appear that either of the parties upon whom service was made had any participation in the making of the contract in question or the transaction out of which it grew or had anything to do therewith other than as above recited; nor does it appear that the defendant at the time of the service had or maintained within this State or District any office or place of business or carried on therein any general business transactions; that apparently the transaction in question was the only one pending at the time between the parties.

VAN FLEET, District Judge:

A foreign corporation can be sued in a jurisdiction other than the State of its creation only when it is at the time doing business therein and maintains there a business or managing agent subject to service of process. Section 411 of the Code of Civil Procedure of the State prescribing the manner of serving process of summons upon a defendant provides for the delivering of a copy thereof as

follows: "If the suit is against a foreign corporation or a nonresident joint stock company or association doing business and having a managing or business agent, cashier or secretary within this State, to such agent, cashier or secretary."

In my view the facts fail to bring the defendant within the statute. It was neither "doing business" within the State nor did it have "a managing or business agent, cashier or secretary" therein within any proper interpretation of its terms. [20] The term "doing business" is used in its broad popular acceptation of meaning and signifies something more substantial than a mere single or isolated transaction arising under a mode of dealing calling for neither a place of business or a local agent. The right of exemption of a foreign corporation from suit in a jurisdiction foreign to the State of its organization is one of substantive value and is not to be taken away by refinements based upon mere casual transactions which do not bring it in some definite substantial way within the ordinary meaning of the language of the statute. This will be found to be the effect of the more recent decisions of the Supreme and Federal courts upon the subject, although there is some diversity of view found in cases from the State courts arising largely out of differences in local statutes.

As stated by Mr. Justice Brandeis in *Phila. & Reading Ry. Co. vs. McKibbin*, 243 U. S. 264: "A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing business within the State

in such manner and to such extent as to warrant the inference that it is present there. And even if it is doing business within the State the process will be valid only if served upon some authorized agent. *St. Louis Southwestern Ry. Co. vs. Alexander*, 227 U. S. 218, 226. Whether the corporation was doing business within the State and whether the person served was an authorized agent are questions vital to the jurisdiction of the court.” (Italics volunteered.) And see, also, *Toledo Rys. vs. Hill*, 244 U. S. 49, and *Peoples Tobacco Company vs. American Can Co.*, 246 U. S. 79.

A like view is taken by the Circuit Court of Appeals of this Circuit in *Doe vs. Springfield Boiler and Manufacturing Co.*, 104 Fed. 684-287, wherein in construing the same section of the code it is said: “Legal service of process upon a corporation which will give a court jurisdiction over it, can be made only in the state where it resides by the law of its creation, or in a [21] state in which it is actually doing business at the time of service, in the manner prescribed by the statutes of that state or of the United States. The question as to what kind of business by a foreign corporation within a state will justify a finding that it is engaged in business therein, and validate a service upon its agent, has been thoroughly and elaborately discussed in the Circuit and Supreme Courts of the United States, and the general consensus of opinion is that the corporation must transact within the state *some substantial part of its ordinary business* by its officers or agents ap-

pointed and selected for that purpose, and that the transaction of an isolated business act is not carrying on or doing business in a state.” (Italics volunteered.)

Citing a large number of authorities. And as to the character of the agent upon whom process may be made under the statute it is further said in that case: “The term ‘business agent,’ as used in the statute, does not mean every man who is intrusted with a commission or an employment by a foreign corporation. * * * The statute was never intended to include under the term ‘business agent’ every person who might incidentally or occasionally transact some business for a foreign corporation. Its meaning must be drawn from the general context of the language used. The business agent mentioned in the statute means one bearing a close relation to the duties of managing agent, cashier, or secretary of the corporation. It must be an agent who is appointed, designated, or authorized to transact and manage one or more distinct branches of business, which may be, and is, conducted and carried on by the corporation within the state where the service is made,—one who stands in the shoes of the corporation in relation to the particular business managed, conducted, and controlled by him for the corporation.” The facts here fall far short of meeting plaintiff’s necessities under the principles thus announced. Neither the character of the business or the authority of the agents bring it within the rule. While the agents may have been authorized to [22] settle the mat-

ter in dispute they were not agents of defendant in any general sense. To the same effect, see *Cady vs. Associated Colonies*, 119 Fed. 420-425; *United States vs. American Bell Telephone Company*, 29 Fed. 17-27-41; *Cooper Mfg. Co. vs. Ferguson*, 113 U. S. 727; *Ladd Metals Co. vs. American Mining Co.*, 152 Fed. 1008; *Welch vs. Farmers' Loan & Trust Co.*, 165 Fed. 492.

In *London Machinery Co. vs. American Malleable Iron Co.*, 127 Fed. 1009, it is said: "The defendant has no office, place of business, agent, agency or property in Iowa and never. . . . As yet, I cannot believe that a foreign corporation, having a difference with an Iowa citizen concerning a contract not made in this State surrenders itself to the Iowa courts because an agent with or without authority, comes to this State seeking to adjust such differences. If such be the law, then compromises so much favored by law, are largely at an end as to foreign corporations."

And in *Wilkins vs. Queen City Savings Bk. & Trust Co.*, 154 Fed. 173, it is said: "I do not understand that *Mutual Life Ins. Co. vs. Spratley*, 172 U. S. 602, 19 Sup. Ct. 308, 43 L. Ed. 569, is authority for the proposition that the presence of an officer of a foreign corporation in this state for the purpose of discussing a proposed adjustment of the single controversy between it and plaintiff is sufficient to establish such a 'doing business within the state' as will take the case out of the rule laid down in *Goldey vs. Morning News*, 156 U. S. 518,

15 Sup. Ct. 559, 39 L. Ed. 517, and *Conley vs. Mathison Alkali Works*, 190 U. S. 406, 23 Sup. Ct. 47 L. Ed. 113.”

The case of *Premo Specialty Mfg. Co. vs. Jersey Cream Co.*, 200 Fed. 352, from this Circuit, principally relied upon by plaintiff, is readily distinguishable from the case of *Doe v. Springfield Boiler & Mfg. Co.* In the former case the facts showed that the contract sued upon was made and was to be performed in Los Angeles where the suit was brought and that the party upon whom service [23] was made was, at the time, the secretary of the corporation and had come to Los Angeles where he was served, with reference to business transactions theretofore had between the parties, out of one of which the cause of action arose. In the present case it is conceded that the contract sued upon was made and was to be performed at Vladivostock; and that the parties served were neither of them officers of the company in any other respect than that Ivanoff was a general business representative of defendant for Canada and the United States having his headquarters in New York, and had been merely specially requested to ascertain upon what terms the controversy between the parties could be accommodated. It is apparent, therefore, that there is nothing in that case which is at variance or out of harmony with the ruling in the case of *Doe vs. Springfield Boiler & Mfg. Co.*, and no purpose on the part of the Court to ignore or depart from the principles announced

in the latter case can be deduced from anything said in the former.

To hold the defendant amenable to the jurisdiction of this Court under the circumstances presented would, I think, be rather harsh and inequitable as allowing the plaintiff to take advantage of a situation which does not in any substantial respect bring it within the right it invokes.

The motion to quash must be granted and the action dismissed. Such will be the order.

[Endorsed]: Filed Oct. 17, 1921. Walter B. Maling, Clerk. [24]

(Title of Court and Cause.)

Bill of Exceptions.

BE IT REMEMBERED, that on the 25th day of August, 1921, the above-entitled court gave and made its order reading as follows, to wit:

(Title of Court and Cause.)

ORDER GRANTING LEAVE TO DEFENDANT TO APPEAR SPECIALLY FOR THE PURPOSE OF MOVING TO QUASH THE ALLEGED SERVICE UPON IT OF THE SUMMONS IN THIS ACTION AND TO DISMISS SAID ACTION; ALSO EXTENDING THE TIME OF DEFENDANT TO ANSWER OR PLEAD TO THE COMPLAINT IN THIS ACTION IN THE EVENT THAT SAID MOTION BE DENIED; AND FIXING DAY OF HEARING OF SAID MOTION.

The Court having read the affidavits of Vasiliy A. Haieff and Nicholas N. Ivanoff in the above-entitled action this day filed and good cause appearing therefor, it is ordered that:

Defendant be and it is hereby granted leave to appear in said action specially for the purpose of moving the Court for an order quashing, annulling, setting aside and holding for naught the alleged service of summons in said action attempted to be made upon defendant and dismissing said action.

The time within which defendant may appear herein generally to answer or otherwise plead to the complaint herein is hereby extended and enlarged to and including the 10th day after the entering herein of an order denying the aforesaid motion of defendant in the event that said motion be denied.

Neither the application for, nor the making of, or filing of this order, nor any reliance thereon by defendant, nor the proceedings to be taken, nor the motion to be made to quash service of summons and to dismiss said action shall be deemed or construed to constitute a general appearance by defendant, or waiver by said defendant of any objection to be urged on said motion to quash [25] service of summons or for a dismissal of this action.

The hearing of said motion of defendant is hereby fixed for Monday the 29th day of August, 1921, at ten o'clock A. M. of said day in the courtroom of this Court, in the Postoffice Building, corner of Seventh and Mission Streets, San Francisco, California, and notice of the same shall be served

upon the plaintiff in said action not less than 3 days before the date hereby fixed for said hearing.

Dated: San Francisco, California, August 25th, 1921.

WM. C. VAN FLEET,
Judge.

That said order bears the following endorsements:

Due service of the within order and receipt of copy is hereby admitted this 25th day of Aug., 1921.

GREGORY & GOODELL,
Attorneys for Plff.

Filed Aug. 25, 1921. W. B. Maling, Clerk.

That on said 25th day of August, 1921, the defendant filed herein the following special appearance:

(Title of Court and Cause.)

SPECIAL APPEARANCE AND MOTION BY
DEFENDANT FOR AN ORDER QUASH-
ING THE ALLEGED SERVICE UPON IT
OF THE SUMMONS IN THIS ACTION
AND FOR A FURTHER ORDER DISMISS-
ING SAID ACTION.

Now comes the defendant herein by Ambrose Gherini and Brewster F. Ames, its attorneys, appearing herein specially for the purpose of this motion, and for no other purpose; and without submitting itself to the jurisdiction of this Court, moves said Court for an order quashing the alleged service upon it of the summons in this action and for a further order dismissing said action upon the following grounds: [26]

(1) Said alleged corporation defendant is not, and never was, a corporation organized or existing under or by virtue of the laws of the State of California, and has not now, and never has had, an office or place of business within the Northern District of California nor elsewhere within the State of California, and has never carried on, conducted nor transacted any business therein.

(2) The contract of sale referred to in the complaint herein was neither entered into, made, nor to be performed, nor was it broken in the Northern District of California, nor elsewhere in the State of California nor in the United States of America.

(3) Defendant does not have or maintain any person within the Southern Division of the Northern District of California upon whom service of summons or other process might be made, and has never designated any person within said Southern Division of the Northern District of California, nor within the State of California upon whom service of summons or other process might be made.

(4) Service of summons in this action was attempted to be made on defendant by serving a copy of the original of said summons together with the copy of complaint in said action on Vasiliy A. Haieff, and another copy of the same upon Nicholas N. Ivanoff in the City and County of San Francisco, State of California, on the 4th day of August, 1921, and the return of service of said summons made by the United States Marshal purports to show that it was served on Vasily A. Haieff and

Nicholas N. Ivanoff, each denominated therein as managing agents of defendant.

(5) At the time of the attempted service of summons upon defendant by service of a copy thereof upon said Vasilly A. Haieff and Nicholas N. Ivanoff, as aforesaid Vasiliy A. Haieff and Nicholas N. Ivanoff were not and neither of them was the managing or business agent, cashier or secretary nor an officer nor agent of said defendant nor authorized by it to receive or accept service [27] of summons upon it nor were they nor was either of them at said time engaged in or doing business for, or on behalf of said defendant in said Southern Division of the Northern District of California, nor in the State of California, excepting that the said Vasiliy A. Haieff had on the second day of August, 1921, and again on the 4th day of August, 1921, attempted to ascertain from Walton N. Moore, president of plaintiff corporation, upon what terms the controversy existing between plaintiff and defendant could be settled or adjusted.

(6) Said Vasiliy A. Haieff and Nicholas N. Ivanoff at the time of the pretended service of summons in this action were both of them only temporarily and casually present in the City and County of San Francisco, State of California.

(7) Defendant has not accepted service herein of said summons attempted to be made upon it as aforesaid, nor has it appeared in said action, nor does it now appear herein except hereby and specially for the purpose of this motion.

Defendant has not waived, nor does it now waive due service of summons upon it.

This motion to quash service of summons as aforesaid and to dismiss the above-entitled action is made upon all of the papers and records now on file and of record in the above-entitled action, and upon such other papers and records in said action as may be on file and of record herein at the time of the hearing of said motion, upon the affidavits of Vasiliy A. Haieff and Nicholas N. Ivanoff served and to be filed herein, which affidavits are hereby referred to and by reference made a part hereof, and upon such other evidence, oral and documentary as may be offered upon the hearing of said motion.

WHEREFORE, defendant prays that the alleged service of summons in this action attempted to be made upon it in the manner hereinbefore stated be quashed, annulled, set aside and [28] held for naught, and that the said action be dismissed.

Dated: San Francisco, Calif., August 25th, 1921.

COMMERCIAL INDUSTRIAL COMPANY,
LTD., a Corporation, Successors of J. J.
CHOORIN & CO., A. W. KASSIA-
NOFF & CO., Appearing Specially by
BREWSTER F. AMES, AMBROSE
GHERINI, Its Attorneys.

[Endorsed]: Filed Aug. 25, 1921. Walter B. Maling, Clerk.

That on said 25th day of August, 1921, said defendants served and filed a notice in the words and figures following, to wit:

(Title of Court and Cause.)

NOTICE OF MOTION TO QUASH THE AL-
LEGED SERVICE OF SUMMONS UPON
DEFENDANT AND TO DISMISS SAID
ACTION.

To Plaintiffs and Messrs. GREGORY & GOO-
DELL Its Attorneys:

Each and all of you will please take notice that defendant, specially appearing for that purpose and not otherwise, herewith serves upon you, and will file herewith in said action its motion for an order quashing, annulling, setting aside and holding for naught the alleged service of summons and for an order dismissing said action: Defendant accompanies the said motion by a special appearance for the sole purpose of making such motion.

A copy of said special appearance and written motion is hereto attached, made a part hereof, and served herewith.

You will also take notice that the above-entitled Court has made an order attached hereto fixing the hearing of said motion for Monday the 29th day of August, 1921, at ten o'clock A. M. of said day.

The defendant will call up its motion for hearing [29] at the time fixed in said order, at the courtroom of the above-named court in the Postoffice Building, corner of Seventh and Mission Streets, San Francisco, California, and will present and make the same upon all of the grounds and upon the papers and evidence mentioned in said motion.

Dated: San Francisco, California, August 25th, 1921.

COMMERCIAL INDUSTRIAL COMPANY. LTD., a Corporation, Successors of J. J. CHOORIN & CO., A. V. KAS-
SIANOFF & CO., Appearing Specially by BREWSTER F. AMES, AMBROSE GHERINI, Its Attorneys.

[Endorsed]: Due service of the within notice of motion and receipt of copy is hereby admitted this 25th day of Aug., 1921.

GREGORY & GOODELL,
Attorneys for Plff.

Filed Aug. 25, 1921. W. B. Maling, Clerk.

That on said 25th day of August, 1921, said defendants served and filed two affidavits in the words and figures following, to wit:

(Title of Court and Cause.)

Affidavit of Nicholas N. Ivanhoff.

Southern Division of the
Northern District of California,
State of California,
City and County of San Francisco,—ss.

Nicholas N. Ivanoff, being first duly sworn, deposes and says:

I am, and at the time of the pretended service of summons upon me in this action, was, a native citizen and resident of Russia permanently domiciled therein, and temporarily residing [30] in New

York City. I am the person named in the return of the United States Marshal annexed to the summons herein as the person to whom a copy of said summons was handed on the 4th day of August, 1921, as the person upon whom service of summons was attempted to be made.

Said alleged corporation defendant is not, and never was a corporation organized or existing under or by virtue of the laws of the State of California, and has not now, and never has had an office or place of business within the Northern District of California nor elsewhere within the State of California, and has never carried on, conducted nor transacted any business therein.

The contract of sale referred to in the complaint herein was neither entered into, made, nor to be performed, nor was it broken in the Northern District of California, nor elsewhere in the State of California, nor in the United States of America.

I am now, and at the time of the pretended service of summons upon me in this action, was only temporarily and casually present in the City and County of San Francisco, State of California, and was not and am not present therein for the purpose of transacting business on behalf of defendant or of transacting any business except as hereinafter particularly set forth.

On the 4th day of August, 1921, in the City and County of San Francisco, California, a copy of the complaint and a copy of the summons in this action were handed to me by the said United States Marshal, and the return of service of said summons

purports to show that it was served on Nicholas N. Ivanoff, managing agent of defendant.

I am not now, nor was I at the time of the aforesaid pretended service of summons upon me, or at all, on or about the 4th day of August, 1921, or at any time or at all, the managing or business agent, cashier, or secretary, or an officer or agent of aforesaid defendant, or authorized by it to receive or accept service of summons upon it. [31]

I arrived in San Francisco, California, on the 27th day of April, 1921, subsequent to all the alleged happenings referred to in the complaint on file herein, and called at the office of Walton N. Moore, president of the plaintiff corporation herein, at his office in San Francisco, California, and I endeavored to ascertain from him upon what terms the controversy existing between plaintiff and defendant could be adjusted in order that I might make a report on the matter. The only result of my call upon Mr. Moore was that he mailed a letter to defendant at Vladivostok, Russia, asking for payment of damages alleged in the complaint. I then went to New York City and returned to San Francisco, California, on July 29, 1921, in order to meet Mr. Vasiliy A. Haieff and his daughter Nadezda, both of whom are Russians and have no knowledge whatever of the English language and who arrived in San Francisco on the 31st day of July, 1921, from Siberia, in order to assist them in every possible way and act as their interpreter in the matter of placing Mr. Haieff's said daughter, Nadezda, in a young ladies' boarding-school in

California and to accompany Mr. Haieff later across the United States to New York City.

Thereafter and on or about the 2d day of August, 1921, and again on or about the 4th day of August, 1921, subsequent to all the alleged happenings referred to in the complaint on file herein, I called on Mr. Walton N. Moore, president of the plaintiff corporation herein at his office in San Francisco, California, with the said Vasiliy A. Naieff and interpreters for him in the conversation with the said Walton N. Moore in a second endeavor to ascertain upon what terms the said controversy could be settled or adjusted.

During the latter part of the said conversation held on the 4th day of August, 1921, there was also present Mr. T. T. C. Gregory, counsel for plaintiff herein.

NICHOLAS N. IVANOFF.

Subscribed and sworn to before me this 23d day of August, 1921.

[Seal] JOSEPH PENSA,
Notary Public in and for the City and County of
San Francisco, State of California. [32]

[Endorsed]: Due service of the within affidavit and receipt of copy is hereby admitted this 25th day of Aug., 1921.

GREGORY & GOODELL,
Attorneys for Plff.

Filed Aug. 25, 1921. W. B. Maling, Clerk.

(Title of Court and Cause.)

Affidavit of Vasiliy A. Haieff.

Southern Division of the Northern
District of California,
State of California,
City and County of San Francisco,—ss.

Vasiliy A. Haieff, being first duly sworn, deposes and says:

I am, and at the time of the pretended service of summons upon me in this action, was, a native citizen and resident of Russia, and permanently domiciled therein. I am the person named in the return of the United States Marshal annexed to the summons herein, as the person to whom a copy of said summons was handed on the 4th day of August, 1921, as the person upon whom service of summons was attempted to be made.

Said alleged corporation defendant is not, and never was a corporation organized or existing under or by virtue of the laws of the State of California, and has not now, and never has had, an office or place of business within the Northern District of California nor elsewhere within the State of California, and has never carried on, conducted nor transacted any business therein.

The contract of sale referred to in the complaint herein was neither entered into, made, nor to be performed, nor was it broken, in the Northern District of California, nor elsewhere in the [33]

State of California, nor in the United States of America.

I am now, and at the time of the pretended service of summons upon me in this action, was, only temporarily and casually present in the City and County of San Francisco, State of California, and was not, and am not, present therein for the purpose of transacting business on behalf of defendant or of transacting any business except as hereinafter particularly set forth.

On the 4th day of August, 1921, in the City and County of San Francisco, California, a copy of the complaint and a copy of the summons in this action were handed to me by the said United States Marshal, and the return of service of said summons purports to show that it was served on Vasill A. Hayeff, managing agent of defendant.

I am not now, nor was I at the time of the aforesaid pretended service of summons upon me, or at all, on or about the 4th day of August, 1921, or at any time or at all, the managing or business agent, cashier or secretary or an officer or agent of aforesaid defendant or authorized by it to receive or accept service of summons upon it.

After my home in Blagovschensk, Russia, had been seized by the Bolsheviks, I, with my wife and children, escaped from Blagoveschensk to Harbin, China, and there decided to send my son Valentine, first, and take my daughter Nadezda later, to the United States for the purpose of placing them in American schools for education, my wife and our remaining children to remain in Russia in accord-

ance with said plan and for the further purpose of improving my health which has been seriously impaired by reason of my previous experiences with the Bolsheviks in Russia; and for no other purpose, except as hereinafter mentioned, I have made this present visit to the State of California with my said daughter. I have entered my said son as a student at the University of California, and my said daughter at Castilleja School at Palo Alto, [34] Santa Clara County, State of California.

On or about the 2d day of August, 1921, and again on or about the 4th day of August, 1921, subsequent to all the alleged happenings referred to in the complaint on file herein, I called on Walton N. Moore, president of plaintiff corporation herein, at his office in San Francisco, California, with Nicholas N. Ivanoff, who interpreted for me in the conversation which I then and there held with the said Walton N. Moore, since I have no knowledge of the English language, and I endeavored to ascertain from him upon what terms the controversy existing between plaintiff and defendant could be adjusted in order that I might make a report on the matter.

During the latter part of the said conversation held on the 4th day of August, 1921, there was also present Mr. T. T. C. Gregory, counsel for plaintiff herein.

VASILIIY A. HAIEFF.

Subscribed and sworn to before me this 23d day of August, 1921.

[Seal]

JOSEPH PENSA,

Notary Public in and for the City and County of
San Francisco, State of California.

Southern Division of the Northern
District of California,
State of California,
City and County of San Francisco,—ss.

Nicholas N. Ivanoff, being first duly sworn, deposes and says:

I hereby declare that I am competent to interpret from the English language into the Russian language and from the Russian language into the English language. I this day translated the above affidavit of Vasiliy A. Haieff to him into the Russian language before he signed and swore to the same.

NICHOLAS N. IVANOFF.

Subscribed and sworn to before me this 23d day of August, 1921.

[Seal] JOSEPH PENSA,
Notary Public in and for the City and County of
San Francisco, State of California. [35]

[Endorsed]: Due service of the within affidavit and receipt of copy is hereby admitted this 25th day of August, 1921.

GREGORY & GOODELL,
Attorneys for Plff.

Filed Aug. 25, 1921. W. B. Maling, Clerk.

That on the 12th day of September, 1921, the plaintiff served and filed two affidavits in the words and figures following, to wit:

(Title of Court and Cause.)

Affidavit of Walton N. Moore.

State of California,

City and County of San Francisco,—ss.

Walton N. Moore, being first duly sworn, deposes and says:

That he is now and at all times herein mentioned has been President of Walton N. Moore Dry Goods Co., Incorporated, the corporation above named as plaintiff in said action. That said last-named corporation is now and at all times herein mentioned has been duly incorporated, acting and existing as such under and by virtue of the laws of the State of New York, in the United States of America, and during all of said times was carrying on and conducting business as a wholesale dealer in dry goods and other merchandise therein and in said State of California, and elsewhere, and that said corporation has for the principal place for the conduct of its business in California a place at and in the City and County of San Francisco aforesaid within the said above-entitled district and division.

The defendant corporation and its predecessors, above named, have at all times herein mentioned been duly authorized and existing as a corporation under and by virtue of the laws of the State of Siberia, Russia, and at all the times herein mentioned [36] the said defendant has been doing business as a corporation in the United States and Canada, and holding itself out to be such to all the world and to the affiant.

That during the last three years the defendant has been a customer of the plaintiff corporation, and has purchased large quantities of merchandise therefrom. That on or about the 12th day of August, 1920, plaintiff sold to defendant merchandise of the value of One Hundred Thirty-eight Thousand *Three and* 05/100 Dollars (\$138,003.05), or thereabout, in payment whereof which defendant contracted and agreed to pay to the plaintiff the said value thereof. That the said merchandise was for the account of defendant delivered to the steamships "Ecuador" and "Tenyo Maru" at the port of San Francisco for transportation, and consigned to Vladivostock, Siberia, to defendant.

That as set forth in said complaint defendant was unable to pay for the said merchandise at Vladivostock, and plaintiff was compelled to retake the same and, pursuant to an agreement with defendant regarding the same, to undertake to resell the same and charge any loss which might be sustained in the transaction to defendant, which amount defendant then and there agreed to pay to plaintiff. That a claim against defendant on the part of plaintiff in the amount of Fifty-six Thousand Seven Hundred Fifty-two and 52/100 Dollars (\$56,752.53), arising out of said transaction has been presented by plaintiff to defendant and has, for several months last past, been the subject of negotiations between the said parties.

That early in the month of April, 1921, the defendant advised plaintiff that its representative, one Nicholas N. Ivanoff, would arrive in the United

States, and would confer with plaintiff, and subsequently on or about the latter part of the month of April, 1921, the said Ivanoff arrived and called upon and conferred with affiant, and presented credentials and letters of authority from the defendant, copies of which said letters, then or thereafter received, are attached hereto marked Exhibits "A," "B," "C," "D" and "E," [37] hereby expressly referred to and made a part hereof.

That the said Nicholas N. Ivanoff then and there stated to affiant that he represented the said defendant in the United States and Canada, and that he was specifically authorized and instructed to settle the question respecting the merchandise hereinbefore mentioned, about which said controversy had arisen. That said Ivanoff stated that first of all he desired to effect a settlement and adjustment of all the accounts between the two companies, and particularly the one growing out of the transaction hereinbefore referred to. No settlement was at that time reached between said Ivanoff and affiant, and the said Ivanoff thereafter departed to the City of New York.

That on or about the first day of August, 1921, the said Ivanoff again appeared at the place of business of the plaintiff corporation at and in the said City and County of San Francisco, and called upon me voluntarily, and then and there stated that he had come to San Francisco to meet one Vasiliy A. Haieff, the principal owner and most important factor in the defendant and other associated com-

panies in Vladivostock and Harbin, Manchuria, who has come to San Francisco especially for such purpose and with him to adjust with the plaintiff corporation the difference growing out of the shipment of merchandise to Vladivostock, hereinabove referred to. He thereupon stated that he desired to make an appointment with me for a conference to settle the matter arising from the subject then in dispute between the companies arising out of said shipments, which said conference was arranged for the following morning.

That such conference was held at the office of plaintiff corporation at the appointed time, and said Ivanoff and said Haieff were present. That the said Ivanoff explained that the said Haieff spoke no English and the said conversation was conducted between the said three parties with the said Ivanoff as an interpreter. That the said Haieff thereupon stated to affiant that his principal business in San Francisco, was, with said Ivanoff, [38] to effect an adjustment with affiant of the differences between the two corporations, parties hereto, and to effect such relations between the said corporations as would result in the corporations which he represented buying large quantities of merchandise from the plaintiff above named.

That such conference was not completed upon said day but was continued upon the following day. During the course of such conference the said Haieff stated to me that he was a director of the defendant company, and of its affiliated concerns in Harbin and Vladivostock, and that he was the per-

son who directed the officials of the said corporations.

That the whole matter of the differences between the two corporations arising out of the contract hereinbefore mentioned was discussed between said three parties, but there was no agreement and settlement thereof reached. Thereupon and thereafter *the* close such negotiations the above-entitled action was commenced and service of process made upon the defendant by serving said managing director and agent Haieff and said Ivanoff, managing agent of said defendant.

That the said two parties came into the jurisdiction of the above-entitled court voluntarily and without inducement of any nature or kind by or on behalf of affiant or of plaintiff corporation for the purpose of transacting the above mentioned business of the corporation in the State of California, and within the jurisdiction of this Court, and of transacting other and additional business within this State and the jurisdiction of this Court, and did conduct and carry on such additional business for *and behalf* of defendant in the purchase and shipment of other merchandise from other corporations of the City of San Francisco to defendant's place of business in Siberia.

WALTON N. MOORE.

Subscribed and sworn to before me this 10th day of September, 1921.

[Seal]

H. L. LANFAR,

Notary Public in and for the City and County of
San Francisco, State of California. [39]

Plaintiff's Exhibit "A."

10-th March, 1921.

(Name of Company
in Russian.)

Messrs. Walton N. Moore Dry Goods Co.,
7 to 33 Front Street,
San Francisco, California.

Gentlemen:

This is to introduce our Mr. Nicholai N. Ivanoff, who is our representative for the U. S. A. and Canada.

Hereby we take the liberty to request you to acquaint him with your large organization and also with the market conditions, having in view to prolong our good business relations and fulfilling our orders allow him please to use your kind assistance.

Beside other things we instructed Mr. Nicholai N. Ivanoff to settle the question about the goods, which were shipped from Vladivostock. We feel certain, that the mentioned goods realized by you without a loss and according to the agreement made in Vladivostock you will not request from us any additional charges, that will give us the possibility to work with you in the future, having in view to make interesting purchases on your market.

We handed to Mr. Nicholai N. Ivanoff our agreement for a purpose of formal canceling of same.

Many thanks in advance, we beg to remain Dear
Sirs

Yours faithfully,

(Signature illegible.)

COMMERCIAL INDUSTRIAL COMPANY,
LTD.,

Successors of J. J. CHOORIN & CO.,
A. V. KASSIANOFF & CO.

Exhibit "A." [40]

Plaintiff's Exhibit "B."

10-th March, 1921.

I. I. TSCHURIN & CO.,

General Stores.

HARBIN, MANCHURIA,

No. 923.

(Answered Apr. 28, 1921,

W. N. M.)

Messrs. Walton N. Moore Dry Goods Co.,

7 to 33 Front Street,

San Francisco, California.

Gentlemen:

This is to introduce our Mr. Nicholai N. Ivanoff, who is appointed by the Commercial-Industrial Company, Ltd., Successors of J. J. Choorin & Co., A. V. Kassianoff & Co., as a representative in U. S. A. and Canada, and who will establish an office in the name of the above Company and in the name of our House.

As it is know to you, that the above company and our firm are related organizations, financed and managed by the same Board of Directors,

therefore taking in consideration our mutual and friendly co-operation, hereby we beg to ask you to give him your kind assistance in anything, that may occur in time of his presence in the States.

Many thanks in advance, we beg to remain, Dear Sirs,

Yours faithfully,
P. P. I. I. TSCHURIN & CO.
(J. J. CHLOORIN & CO.)

(Signature illegible.)

Exhibit "B." [41]

Plaintiff's Exhibit "C."

Commercial House,

CHLOORIN & CO.

Harbin.

(New City)

Harbin, Mar. 8, 1921.

#226

M K

Messrs. Walton Moore & Co.,

San Francisco, Cal.

Dear Sirs:—

By this we introduce the bearer Mr. Nicholas N. Ivanoff as Attorney in Fact for the Commercial Industrial Co., Ltd., Successors J. J. Choorin & Co., A. V. Kassianoff & Co., who came to America for attending to all kinds of business and opening of an office for buying merchandise as for the above mentioned firm and also for us.

As you know, the mentioned, Commercial Industrial Company and our firm are closely related organizations, financed & directed by the same identical persons, on the ground of that and on the force of our good commercial relations we ask you to show every courtesy to our Mr. Nicholas N. Ivanoff, in all kinds of business matters.

Sincerely thanking you beforehand, we remain with perfect respect,

COMMERICAL HOUSE,

J. J. CHOORIN & CO.

(Signed) A. F. TOPORKOFF,

(Signed) Accountant,

L. SCHARICHEFF.

Exhibit "C." [42]

Plaintiff's Exhibit "D."

J. J. CHOORIN CO., INC.

(Commerical Industrial Co., Ltd.

Succ. J. J. Choorin Co. A. V. Kassianoff Co.)

NEW YORK OFFICE:

149 Broadway,

New York City, N. Y.

New York N. Y., May 25, 1921.

Walton N. Moore Dry Goods Co.,

Front & Market St.,

San Francisco, Cal.

(Answered June 1, 1921.

W. N. M.)

Gentlemen:

We have the pleasure to inform you that our New York office is located in the Singer Building

and our Mail address is as follows:

J. J. CHOORIN CO.

149 Broadway,

New York City, N. Y.

Cable Address: CHOORIN, New York.

This is for your information, we are

Very truly yours,

N. IVANOFF,

Atty. in fact.

J. J. CHOORIN Co.

(COMMERICAL INDUSTRIAL CO.,
LTD.,

Succ. J. J. CHOORIN Co.

A. V. KASSIANOFF CO.)

Enclosure: Original letter and translation. [43]

Plaintiff's Exhibit "E."

"J. J. CHOORIN CO. INC."

149 Broadway,

New York City,

U. S. A.

June 1, 1921.

Walton N. Moore Dry Goods Co.,

San Francisco, Cal.

Dear Sirs:

By this we take pleasure to inform you that "The Commercial Industrial Co., Ltd., Successors J. J. Choorin Co. A. V. Kassianoff Co. head office Harbin, Manchuria," has established an office for the United States and Canada at Singer Building, 149 Broadway, New York City, N. Y. U. S. A., in the name for brevity sake "J. J. Choorin Co. Inc."

The New York office has been established for the purpose of buying various kinds of merchandise for the general trade in the Far East and for supplying our four large Department Stores which are located in Harbin-Manchuria, Vladivostock, Siberia. Also for the purpose of importing of Raw Furs, especially high class Sable Skins which has been our specialty for many years.

Our firm was established in 1869.

Yours very truly,
N. IVANOFF,
J. J. CHORIN CO., INC.,
COMMERICAL INDUSTRIAL CO.
LTD.,
Succ's. J. J. CHORIN CO.
A. V. KASSIANOFF CO.,
New York Office.

Exhibit "E." [44]

[Endorsed]: Receipt of a copy of the within affidavit is hereby admitted this 12th day of September, 1921.

BREWSTER F. AMES,
AMBROSE GHERINI,
Attorneys for Defendant Appearing for Purposes
of This Motion Only.

Filed Sept. 12, 1921. Walter B. Maling, Clerk.

(Title of Court and Cause.)

Affidavit of G. S. Garrissere.

State of California,

City and County of San Francisco,—ss.

G. S. Garrissere, being first duly sworn, deposes and says:

That he is now and at all times herein mentioned was a resident of the said City and County of San Francisco, and is now and has been during all of the times herein mentioned was Credit Manager of California Central Creameries, a corporation doing business within the State of California, and in said City and County of San Francisco.

That on or about August 20, 1921, Commercial Industrial Company, Ltd., successors of J. J. Choorin & Co., A. V. Kassianoff & Co., defendant above-named and said California Central Creameries, a corporation, had a business transaction at and in said City and County of San Francisco, involving the purchase by said defendant from said California Central Creameries, a corporation by said defendant of certain merchandise consisting of ten (10) tubs of fancy swiss cheese for shipment to the Orient on the S. S. [45] "Persia Maru," consigned to said firm at Harbin, Manchuria. That the said transaction was carried on and conducted on behalf of said defendant by one Nicholas N. Ivanoff, who represented himself to be the agent and representative of the said corporation. That the consideration for said sale was

in money represented by a check in a banking house in New York City, drawn by "Commercial Industrial Company, Ltd., a corporation, successors of J. J. Choorin & Co., A. V. Kassianoff & Co." That said check was paid and the merchandise shipped in due course.

G. S. GARRISSERE.

Subscribed and sworn to before me this 10th day of September, 1921.

[Seal]

H. L. LANFAR,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Receipt of a copy of the within are hereby admitted this 12th day of September, 1921.

BREWSTER F. AMES,

AMBROSE GHERINI,

Attorneys for Defendant Appearing Specially for Purposes of This Motion Only.

Filed Sept. 12, 1921. Walter B. Maling, Clerk.
[46]

THAT THEREAFTER said motion came regularly on for hearing and was heard upon the complaint, summons, return of service of summons, and the affidavits (copies of which are hereinabove contained) for and on behalf of the parties plaintiff and defendant, and upon all the other documentary proofs hereinabove set forth, and upon said special appearance, order permitting the same, and notice of motion hereinabove contained, and at said hearing said matter was argued for and on behalf of plaintiff and for and on behalf of de-

fendant specially appearing, and thereafter said matter was submitted to the above-entitled Court for decision;

That thereafter, and after consideration and deliberation a written opinion was filed herein by the Judge of said court in which it was stated that the said motion to quash said service of summons must be granted and said action dismissed and that such would be the order.

That thereafter, and on the 9th day of January, 1922, a judgment of dismissal was made and entered herein.

To the order of said Court granting said motion to quash said service of summons and dismissing said action the plaintiff excepted and now excepts and assigns said exception as

PLAINTIFF'S EXCEPTION No. ONE.

To the order of said Court granting said motion to quash said service of summons the plaintiff excepted and now excepts and assigns said exception as

PLAINTIFF'S EXCEPTION No. TWO.

To the order of said Court dismissing said action the plaintiff excepted and now excepts and assigns said exception as

PLAINTIFF'S EXCEPTION No. THREE.

ASSIGNMENTS OF ERROR.

1. The plaintiff claims that the Court erred in granting said motion to quash said service of summons and dismissing said action (hereinabove shown as Exception No. One.) [47]

2. The plaintiff claims that the Court erred in granting said motion to quash said service of summons (hereinabove shown as Exception No. Two).

3. The plaintiff claims that the Court erred in dismissing said action (hereinabove shown as Exception No. Three).

The foregoing constitutes all the proceedings had and taken in the above-entitled matter, and now, within the time required by law and the rules of this Court, said plaintiff proposes the foregoing as and for its bill of exceptions to the rulings, orders and decision of said Court in said matter, and prays that it may be settled and allowed as correct.

Dated: San Francisco, California, January 19, 1922.

GREGORY & GOODELL,
Attorneys for Plaintiff.

Stipulation as to the Correctness of Bill of Exceptions.

IT IS HEREBY STIPULATED that the above and foregoing constitutes a true and correct bill of exceptions in the above-entitled matter and that the same contains all the proceedings had and taken therein and that the same may be settled and allowed as and for the bill of exceptions to the rulings, orders and decision of said Court in said matter. Nothing in this stipulation contained shall be construed to admit any error as specified and assigned under the heading of Assignments of Error, or otherwise.

Dated: San Francisco, California, Feb. 28, 1922.

AMBROSE GHERINI,
BREWSTER F. AMES,

Attorneys for Defendant Specially Appearing for
the Purposes of Said Motion.

**Order Settling, Certifying, and Allowing Bill of
Exceptions.**

The foregoing bill of exceptions now being presented in due time and found to be correct, I do hereby certify that the said [48] bill is a true bill of exceptions and contains all the proceedings had and taken therein and that the same may be settled and allowed as and for the bill of exceptions to the rulings, orders and decision of said Court in said matter.

Dated: San Francisco, California, March 7th, 1922.

WM. C. VAN FLEET,
United States District Judge, Northern District of
California.

Receipt of a copy of the within Draft of Proposed Bill of Exceptions hereby admitted this 19th day of January, 1922.

AMBROSE GHERINI,
BREWSTER F. AMES,

Attorneys for Defendant Specially Appearing for
the Purpose of the Within Mentioned Motion
Only.

[Endorsed]: Filed Mar. 7, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [49]

In the Southern Division of the District Court of
the United States for the Northern District of
California, Second Division.

No. 16,619.

WALTON N. MOORE DRY GOODS CO., INCOR-
PORATED, a Corporation,

Plaintiff,

vs.

COMMERCIAL-INDUSTRIAL COMPANY, LTD.,
a Corporation, Successors of J. J. CHOORIN
& CO., A. V. KASSIANOFF & CO.,

Defendant.

Petition for Writ of Error.

To the Hon. WILLIAM C. VAN FLEET, Judge
the District Court Aforesaid.

Walton N. Moore Dry Goods Co., Incorporated,
a corporation, plaintiff above named, feeling ag-
grieved by the judgment rendered and entered in
the above-entitled cause in the District Court of
the United States, in and for the Northern District
of California, on the 9th day of January, 1922, and
complaining that in the record and proceedings
had in said cause, and also, in the rendition and
entry of said judgment, manifest error has occur-
red to the great damage of the said plaintiff, as
more fully appears from the assignment of errors
which is filed with this petition, comes now and
petitions the above-entitled Court for an order al-
lowing said plaintiff to prosecute a writ of error

of the United States Circuit Court of Appeals in and for the Ninth Circuit, and that such writ of error may issue out of the said United States Circuit Court of Appeals for the Ninth Circuit, [50] for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this case, duly authenticated may be sent to said Circuit Court of Appeals under and according to the laws of the United States, in that behalf made and provided and for such other and further or different order as to the Court may seem meet.

GREGORY & GOODELL,

Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 6, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [51]

In the Southern Division of the District Court of the United States for the Northern District of California, Second Division.

No. 16,619.

WALTON N. MOORE DRY GOODS CO., INCORPORATED, a Corporation,

Plaintiff,

vs.

COMMERCIAL-INDUSTRIAL COMPANY, LTD., a Corporation, Successors of J. J. CHOORIN & CO., A. V. KASSIANOFF & CO.,

Defendant.

Assignment of Errors.

Now comes the plaintiff, and plaintiff in error, Walton N. Moore Dry Goods Co., Incorporated, a corporation, and in connection with its petition for a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit, directed to the above-entitled court, says that in the record, the proceedings and the final judgment made and entered in said cause of the 9th day of January, 1922, manifest errors have intervened to the prejudice of the plaintiff and plaintiff in error of which it makes the following assignments, to wit:

I.

The Court erred in granting the motion to quash the service of summons on Commercial Industrial Company, Ltd., a corporation, successors of J. J. Choorin & Co., A. V. Kassianoff & Co., and dismissing said action.

II.

The Court erred in granting said motion to quash said [52] service of summons.

III.

The Court erred in dismissing said action.

IV.

The judgment entered herein is contrary to law.

WHEREFORE plaintiff and plaintiff in error prays that said judgment be reversed, with directions that the cause be remanded to the Southern Division of the United States District Court for the Northern District of California (Second Divi-

sion), with directions to reverse the said judgment and set the same aside.

GREGORY & GOODELL,
Attorneys for Plaintiff in Error.

[Endorsed]: Filed Mar. 6, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[53]

In the Southern Division of the District Court of
the United States for the Northern District of
California, Second Division.

No. 16,619.

WALTON N. MOORE DRY GOODS CO., INCOR-
PORATED, a Corporation,
Plaintiff,

vs.

COMMERCIAL-INDUSTRIAL COMPANY,
LTD., a Corporation, Successors of J. J.
CHOORIN & CO., A. V. KASSIANOFF &
CO.,

Defendant.

Order Allowing Writ of Error.

On motion of Gregory & Goodell, attorneys for
plaintiff herein,—

IT IS HEREBY ORDERED that a writ of error
from the United States Circuit Court of Appeals
for the Ninth Circuit from the judgment heretofore
filed and entered herein, be, and the same is hereby
allowed; that a certified transcript of the record,

affidavits, stipulations, and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit, and that a citation issue in due course.

IT IS FURTHER ORDERED that the bond on error be fixed at the sum of three hundred dollars.

Dated Mch. 7th, 1922.

WM. C. VAN FLEET,
Judge of the United States District Court in and
for the Northern District of California.

[Endorsed]: Filed Mar. 7, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[54]

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND.

Home Office: Baltimore, Maryland.
Pacific Department Office,
601 Insurance Exchange Building,
San Francisco, Cal.

(Title of Court and Cause.)

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, Walton N. Moore Dry Goods Co., Incorporated, a corporation, as principal, and Fidelity and Deposit Company of Maryland, a corporation of the State of Maryland duly authorized to transact the business of indemnity and suretyship in the State of California, and having an office and principal place of business for the State of California in

the City of San Francisco, as surety, are held and firmly bound unto said Commercial-Industrial Company, Ltd., a corporation, successor of J. J. Choorin & Co., A. V. Kassianoff & Co., in the sum of Three Hundred and 00/100 (\$300.00) Dollars, lawful money of the United States, to be paid to it, or its certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, our respective heirs, executors and administrators and successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals this 8th day of March, A. D. 1922.

WHEREAS, the above-named Walton N. Moore Dry Goods Co., Incorporated, a corporation, is about to prosecute a Writ of Error to reverse the judgment of the United States District Court for the Northern District of California, Southern Division, rendered against said Walton N. Moore Dry Goods Co., Incorporated, and in favor of Commercial-Industrial Company, Ltd., a corporation, [55] successors of J. J. Choorin & Co., A. V. Kassianoff & Co.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Walton N. Moore Dry Goods Co., Incorporated, a corporation, shall prosecute its said writ of error to effect, and answer all costs if it shall fail to make good its

plea, then this obligation shall be void; otherwise to remain in full force and virtue.

WALTON N. MOORE DRY GOODS CO.,
INCORPORATED. (Seal)

B. R. FUNSTEN, V. P.

WM. A. RANKIN, Secty.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND. (Seal)

By F. E. BRISBINE,

Attorney-in-fact.

Attest: M. F. CARLETON,

Agent.

Approved this 8th day of March, 1922.

FRANK H. RUDKIN,

Judge.

[Endorsed]: Filed Mar. 8, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [56]

In the Southern Division of the District Court of
the United States for the Northern District of
California, Second Division.

No. 16,619.

WALTON N. MOORE DRY GOODS CO., IN-
CORPORATED, a Corporation,
Plaintiff,

vs.

COMMERCIAL INDUSTRIAL COMPANY,
LTD., a Corporation, Successors of J. J.
CHORIN & CO., A. V. KASSIANOFF &
CO.,

Defendant.

Praeceptum for Transcript of Record.

To the Clerk of said Court:

Sir: Please prepare record on writ of error to United States Circuit Court of Appeals and include therein the following:

Judgment-roll.

Opinion.

Bill of exceptions.

Petition for writ of error.

Assignment of errors.

Order allowing writ of error.

Bond.

Writ of error.

Citation.

GREGORY & GOODELL,
Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 8, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [57]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 16,619.

WALTON N. MOORE DRY GOODS CO., INC.,
a Corporation,

Plaintiff,

vs.

COMMERCIAL INDUSTRIAL COMPANY,
LTD., a Corporation, etc.,

Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing fifty-seven (57) pages, numbered from 1 to 57, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled cause, as enumerated in the praecipe for record on writ of error, as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$25.90; that said amount was paid by the plaintiff, and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto
set my hand and affixed the seal of said District
Court, this 16th day of March, A. D. 1922.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern
District of California. [58]

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable WILLIAM C. VAN FLEET, Judge of the Southern Division of the District Court of the United States for the Northern District of California, GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, between Walton N. Moore Dry Goods Co., Incorporated, a Corporation, plaintiff *in* in error and Commercial Industrial Company, Ltd., a corporation, successors of J. J. Choorin & Co., A. V. Kassianoff & Co., defendant in error, a manifest error hath happened, to the great damage of the said Walton N. Moore Dry Goods Co., Incorporated, a corporation, plaintiff in error, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspec-

ted, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 9th day of March, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal] WALTER B. MALING,
Clerk of the United States District Court for the
Northern District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by:

WM. C. VAN FLEET,
U. S. Dist. Judge. [59]

Receipt of a copy of the within writ of error is hereby admitted this 13th day of March, 1922.

BREWSTER F. AMES,
AMBROSE GHERINI,
Attorneys for Defendant.

[Endorsed]: No. 16,619. United States District Court for the Northern District of California, Southern Division. Walton N. Moore Dry Goods Co., Incorporated, a Corporation, Plaintiff in Error, vs. Commercial Industrial Company, Ltd., a Corporation, Successors of J. J. Choorin & Co., A. V. Kassianoff & Co., Defendant in Error. Writ of Error. Filed Mar. 15, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

(Return to Writ of Error.)

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern
District of California. [60]

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Commercial Industrial Company, Ltd., a Corporation, Successors of J. J. Choorin & Co., A. V. Kassianoff & Co., Defendant Herein and to Ambrose Gherini, Esq., and Brewster F. Ames, Esq., Its Attorneys, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within

thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California wherein Walton N. Moore Dry Goods Co., Incorporated, a corporation, is plaintiff in error and Commercial Industrial Company, Ltd., a corporation, successors of J. J. Choorin & Co., A. V. Kassianoff & Co., is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 9th day of March, A. D. 1922.

WM. C. VAN FLEET,
Judge United States District Court. [61]

[Endorsed]: No. 16,619. United States District Court for the Northern District of California, Southern Division. Walton N. Moore Dry Goods Co., Incorporated, a Corporation, Plaintiff in Error, vs. Commercial Industrial Company, Ltd., a Corporation, Successors of J. J. Choorin & Co., A. V. Kassianoff & Co., Defendant in Error. Citation on Writ of Error. Filed Mar. 15, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Receipt of a copy of the within citation on writ

of error is hereby admitted this 13th day of March, 1922.

BREWSTER F. AMES,
AMBROSE GHERINI,
Attorneys for Defendant.

[Endorsed]: No. 3848. United States Circuit Court of Appeals for the Ninth Circuit. Walton N. Moore Dry Goods Co., Incorporated, a Corporation, Plaintiff in Error, vs. Commercial Industrial Company, Ltd., a Corporation, Successors of J. J. Choorin & Co., A. V. Kassianoff & Co., Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed March 25, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

